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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,198	01/31/2005	Jonathon Charles Helmer	50162-00001	3568
25231 7590 08/20/2008 MARSH, FISCHMANN & BREYFOGLE LLP 8055 East Tufts Avenue Suite 450 Denver, CO 80237				
EXAMINER				
LE, UYEN CHAU N				
ART UNIT		PAPER NUMBER		
2887				
MAIL DATE		DELIVERY MODE		
08/20/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/501,198

**Applicant(s)**

HELMER ET AL.

**Examiner**

Uyen-Chau N. Le

**Art Unit**

2887

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32, 34, 37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32, 34, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Requesting Continued Examination (RCE)***

1. Receipt is acknowledged of the Requesting Continued Examination (RCE) field 05/27/2008. Claims 1-32, 34, 37 and 38 are pending.

### ***Claim Objections***

2. Claim 1 is objected to because of the following informalities:

Re claim 1, line 3: Substitute "each of said character" with -- each of said characters --.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-25 and 34-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Tamura (EP 1 055 919 A1 - cited by the Applicant).

Re claims 1-25 and 34-38: Tamura an identifier comprising a machine readable bar or pictographic code, the code comprising: multiple characters, wherein each said characters is machine readable, is comprised of multiple components and has a

machine readable value, wherein at least one said character is a changeable character the value of which is changeable from an original value to a modified value in response to a stimulus; wherein for each said changeable character, at least one of the said components is configured for being changed from an original state to a modified state in response to the stimulus to change the value of the changeable character from the a4q-original value to the a-modified value in response to the a-stimulus, wherein both the original value and the modified value of the changeable character are machine readable; wherein at least some of the machine readable components have binary values; wherein the code is a bar code and identifier each of the characters comprises a series of bars representing a digit, and each of the original value and the modified value is a different said digit; wherein one or more graphic symbols and/or characters are alpha-numeric characters; wherein the identifier includes a bar code or pictographic code; wherein the bar code is a 1-dimensional bar code or pictographic code (fig. 7); wherein the bar code is a 2-dimensional bar code or pictographic code; wherein the bar code is a 3-dimensional bar code or pictographic code; wherein the identifier includes at least one component configured for being read by a human which changes from an original form configured for being read by a human to a modified form configured for being read by a human in response to the stimulus (figs. 7A & 7B); wherein the stimulus is a change in temperature; wherein the stimulus is a change in pressure; wherein the stimulus is a change in electric current; wherein the stimulus is a change in electromagnetic field; wherein the stimulus is a change in light (level, accumulative, wavelength); wherein the stimulus is a change in Chemical composition; wherein the

stimulus is exposure to certain gases or vapors; wherein the stimulus is exposure to certain liquids, emulsions or slurries; wherein the stimulus is exposure to certain solids; wherein the stimulus is a change in time or an indirect consequence of a change in time; wherein at least some of the components may be used to represent digits; wherein at least one of the digits is a check; wherein the check digit does not change in response to the stimulus and its value is incorrect after the identifier has responded to the stimulus; wherein the check digit does not change in response to the stimulus and its value is correct after the identifier has responded to the stimulus; wherein the check digit changes in response to the stimulus such that its value is incorrect after the identifier has been exposed to the stimulus; wherein the check digit changes in response to the stimulus such that its value is correct after the identifier has responded to the stimulus (figs. 7A-D; paragraphs [0036-0037]).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tamura in view of King et al (US 7098850 B2). The teachings of Tamura have been discussed above.

Re claims 26-31: Tamura has been discussed above but is silent with respect to the identifier includes a power source and an electrical circuit; wherein the power source includes at least one of a primary electric cell, a secondary electric cell, a photovoltaic device, a piezo-electric device or a capacitor; wherein the identifier including a power antenna and an electrical circuit; wherein at least part of the power source is formed by printing; wherein at least part of the power antenna is formed by printing; wherein the electrical circuit is placed such that it will tend to be disturbed if the package is opened or tampered with; respectively.

King et al teaches a transponder 10 disposed on a food container (200, 600) having an antenna formed by printing (figs. 1, 11B and 15A; col. 6, lines 1+ and col. 13, lines 30-55).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the teachings of King et al into the system as taught by Tamura with an advanced system for producing a more accurate and faster reading detecting due the RFID/transponder verse barcode. Furthermore, such modification

would have been an obvious engineering variation, well within the ordinary skill in the art, for identify a product condition, and therefore an obvious expedient.

8. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tamura in view of Zahn (DE4303035 - cited by the Applicant). The teachings of Zahn and Tamura have been discussed above.

Re claim 32: Tamura has been discussed above but is silent with respect to an identifier formed by applying a light colored material over a dark colored surface such that gaps in the light colored material form a machine readable code .

Zahn discloses an identifier formed by applying a light colored material over a dark colored surface such that gaps in the light colored material form a machine readable code (see English abstract).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the teachings of Zahn into the system as taught by Tamura for intended user (i.e., utilize Zahn system in a food processing/marketing system). Furthermore, such modification would such modification would have been an obvious engineering variation, well within the ordinary skill in the art, for detecting/determining food contamination, and therefore an obvious expedient.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-32, 34, 37 and 38 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uyen-Chau N. Le whose telephone number is 571-272-2397. The examiner can normally be reached on maxi-flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven S. Paik can be reached on 571-272-2404. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Uyen-Chau N. Le/  
Primary Examiner, Art Unit 2887